

1 KILPATRICK TOWNSEND & STOCKTON LLP
2 April E. Isaacson (SBN 180638)
3 aisaacson@kilpatricktownsend.com
4 Two Embarcadero Center, Suite 1900
5 San Francisco CA 94111
6 (415) 273 8306

7 Sarah Y. Kamran (SBN 347617)
8 skamran@kilpatricktownsend.com
9 1801 Century Park East, Suite 2300
10 Los Angeles CA 90067
11 (310) 777 3733

12 Mitchell G. Stockwell (*pro hac vice*)
13 mstockwell@kilpatricktownsend.com
14 Vaibhav P. Kadaba (*pro hac vice*)
15 wkadaba@kilpatricktownsend.com
16 Michael J. Turton (*pro hac vice*)
17 mturton@kilpatricktownsend.com
18 Courtney S. Dabbieri (*pro hac vice*)
19 cdabbieri@kilpatricktownsend.com
20 Christopher S. Leah (*pro hac vice*)
21 cleah@kilpatricktownsend.com
22 Andrew Saul (*pro hac vice*)
23 asaul@kilpatricktownsend.com
24 1100 Peachtree Street, NE, Suite 2800
25 Atlanta GA 30309
26 (404) 815 6500

27 *Attorneys for Defendants*
28 *Cox Communications, Inc.; CoxCom, LLC; and*
Cox Communications California, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

20 ENTROPIC COMMUNICATIONS, LLC,
21
22 Plaintiff,
23
24 v.

25 COX COMMUNICATIONS, INC.;
26 COXCOM, LLC; and COX
27 COMMUNICATIONS CALIFORNIA,
28 LLC,
Defendants.

LEAD CASE:
Case No. 2:23-cv-1043-JWH-KES

RELATED CASE:
Case No. 2:23-cv-1047-JWH-KES

**CORRECTED COX DEFENDANTS'
MOTION TO STRIKE
ENTROPIC'S RESPONSE TO
COX'S OBJECTIONS TO SPECIAL
MASTER'S REPORT AND
RECOMMENDATION ON
MOTIONS REFERRED BY THE
COURT ON FEBRUARY 9, 2024**

1 COX COMMUNICATIONS, INC.,
2 COXCOM, LLC, AND COX
3 COMMUNICATIONS CALIFORNIA,
4 LLC,

Counter-Claimants,

5 v.

6 ENTROPIC COMMUNICATIONS, LLC;
7 MAXLINEAR COMMUNICATIONS
8 LLC; AND MAXLINEAR, INC.

Counter-Defendants

Date: July 19, 2024
Time: 9:00 a.m.
Ctvm: 9D, 9th Floor

Before the Hon. John W. Holcomb

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 19, 2024, or as soon thereafter as counsel may be heard, in Courtroom 9D of the United States District Court for the Central District of California, located at 411 W. 4th Street, Santa Ana, California, Defendants Cox Communications, Inc., CoxCom LLC, and Cox Communications California, LLC (collectively, “Cox”) hereby move to strike Sections C and D of Plaintiff Entropic Communications, LLC’s (“Entropic”) Response to Defendant Cox’s Objections to the Special Master’s Report and Recommendation (“R&R”) on Motions Referred by the Court on February 9, 2024 (Dkt. 510). Entropic’s Response to Cox’s Objections to the Special Master’s R&R includes unauthorized, untimely, and improper new objections to the R&R, which are outside the scope of, and do not constitute a response to Cox’s limited objections to the R&R regarding MaxLinear’s motion to dismiss (Dkt. 488). MaxLinear’s joinder of Entropic’s Response compounds the impropriety of the Response as it effectively gave MaxLinear and Entropic fifteen pages to respond to Cox’s objections rather than the ten permitted. Accordingly, Cox respectfully requests that Entropic’s improper “Response” be stricken.

This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on June 4, 2024.

I. FACTUAL BACKGROUND

The Special Master issued the R&R on April 22, 2024 and ordered that “[a]ny objections to the findings, conclusions, and recommendations contained in this report should be filed no later than within the time period set forth by the Federal Rule of Civil Procedure 53(f)(2).” (Dkt. 446 at 97.)

Pursuant to the R&R and Rule 53(f)(2), MaxLinear filed objections to the R&R on May 13, 2024, objecting to the R&R’s determinations that Cox’s breach of

1 contract claim and declaratory judgment claim should not be dismissed. (Dkt. 469-
2 1.) Entropic did not file any objections to the R&R on May 13, 2024.

3 Cox also filed objections to the R&R on May 13, 2024, in which it raised
4 limited objections to the R&R's findings on Cox's counterclaims against
5 MaxLinear. (*See* Dkt. 488.) Specifically, Cox objected in two respects: (1) Cox
6 objected to the R&R noting that aspects of Cox's contract and breach theories were
7 potentially implausible, to the extent such statements were not dicta; and (2) Cox
8 objected the R&R's dismissal of its quasi contract claim as inconsistent with its
9 contract claim. (*Id.* at 4-12.)

10 The deadline to respond to objections was May 24, 2024, and no further
11 briefing was contemplated following the responses, "unless specifically requested
12 by the Court." (Dkt. 492 at 2.) MaxLinear filed a six-page response, addressing only
13 Cox's objection to the R&R's dismissal of its quasi-contract claim. (Dkt. 511.)
14 Entropic filed a separate eight and a half-page response, addressing Cox's objection
15 to the R&R's discussion of Cox's breach theories, and raising new objections to the
16 R&R. (Dkt. 510.) MaxLinear joined Entropic's response. (Dkt. 512.)

17 **II. ARGUMENT**

18 Entropic's "Response" should be stricken as it introduces new objections and
19 requests modifications to the R&R, after the deadline, when Cox cannot respond
20 absent a request from the Court per the parties' stipulation. Federal Rule of Civil
21 Procedure 53(f)(2) expressly states that, "[a] party may file objections to – or a
22 motion to adopt or modify – the master's order, report, or recommendations no later
23 than 21 days after a copy is served, unless the court sets a different time." The R&R
24 notes that "[f]ailure to timely object might preclude consideration of objections or
25 may affect the standard of review applied by the District Judge or other appellate
26 tribunal." (Dkt. 446 at 97.)

1 While a portion of Entropic’s Response addresses the objection Cox made to
2 the R&R’s discussion on some of the breaches by MaxLinear Cox alleges in the
3 Counterclaims, the majority addresses Entropic’s contention that “[t]he Court should
4 modify the R&R to dismiss Cox’s claim for breach of contract as either implausible
5 or not pled, as well as the claims for declaratory judgment and tortious interference
6 based on those alleged breaches.” (Dkt. 510 at 12.) For example, the headings for
7 Sections C and D begin “The R&R Should Be Modified,” and proceed to assert
8 untimely, unauthorized new objections and requests to modify the R&R. (*Id.* at 8-
9 12.) These are improper under the R&R and Rule 53(f)(2), which set forth a specific
10 time for filing objections and requests to modify the R&R—a time that is before
11 parties file their responses.

12 In light of Entropic’s failure to file any timely objections of its own, Entropic
13 was only authorized to respond to Cox’s objections, not to assert new objections, in
14 its Response. As such, the Court should not consider Entropic’s untimely new
15 objections. (Dkt. 446 at 97); *see, e.g., Cibus LLC v. Cap. Ins. Grp.*, No. CV-20-
16 00277-TUC-JGZ (DTF), 2021 WL 1100376, at *2 (D. Ariz. Mar. 23, 2021) (“[T]he
17 the Court will strike those portions of the Plaintiff’s response that assert arguments
18 that are not responsive to arguments raised by Eagle West in its limited objection.”);
19 *Lambert v. Dennis*, No. C15-1213-RSM, 2016 WL 7441012, at *1 (W.D. Wash.
20 Dec. 27, 2016), *aff’d*, 737 F. App’x 354 (9th Cir. 2018) (striking objections as
21 untimely when filed after deadline); *In re Cathode Ray Tube (Crt) Antitrust Litig.*,
22 No. C-07-5944 JST, 2016 WL 945981, at *1 n.1 (N.D. Cal. Mar. 14, 2016)
23 (overruling objection as untimely where order appointing Special Master required
24 objections “within 14 days from the day the Special Master filed the order, report,
25 and/or recommendation via ECF” and “objection was filed more than 14 days after
26 issuance of the R&R”).

Further, MaxLinear's joinder of Entropic's untimely objections should be rejected at least as it is an improper attempt to circumvent the 10-page limit on responses. By joining Entropic's Response, MaxLinear was permitted an additional eight and a half pages to respond to Cox's objections. This was improper and further supports striking Entropic's Response.

III. CONCLUSION

Entropic had an opportunity to object to the R&R by May 13, but failed to file any objections to the findings on Cox's counterclaims of its own. Its belated attempt to raise new objections and arguments at the eleventh hour, when it knows Cox has no opportunity to respond to them, is improper. Its unauthorized and untimely new objections should be rejected and stricken from Entropic's Response.

Dated: June 12, 2024

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ April E. Isaacson

April E. Isaacson (SBN 180638)
 aisaacson@kilpatricktownsend.com
 Two Embarcadero Center, Suite 1900
 San Francisco CA 94111
 (415) 273 8306

Sarah Y. Kamran (SBN 347617)
 skamran@kilpatricktownsend.com
 1801 Century Park East, Suite 2300
 Los Angeles CA 90067
 (310) 777 3733

1 Mitchell G. Stockwell (*pro hac vice*)
mstockwell@kilpatricktownsend.com
2 Vaibhav P. Kadaba (*pro hac vice*)
wkadaba@kilpatricktownsend.com
3 Michael J. Turton (*pro hac vice*)
mturton@kilpatricktownsend.com
4 Courtney S. Dabbieri (*pro hac vice*)
cdabbieri@kilpatricktownsend.com
5 Christopher S. Leah (*pro hac vice*)
cleah@kilpatricktownsend.com
6 Andrew N. Saul (*pro hac vice*)
asaul@kilpatricktownsend.com
7 1100 Peachtree Street, NE, Suite 2800
8 Atlanta GA 30309
9 (404) 815 6500
10

11 *Attorneys for Defendants*
12 *Cox Communications, Inc.; CoxCom, LLC; and*
13 *Cox Communications California, LLC*
14
15
16
17
18
19
20
21
22
23
24
25
26
27